

Inaction . . . The Essence Of Power

By Ed Smith

Four months have passed since the first publication of constitutional conflict created by the presence of lawyers serving in the Legislative or Executive branches of N.J. State government.

The discovery was the result of research completed in preparation for an article in *The Patriot* to celebrate the 50th anniversary of the N.J. State Constitution. Comparison of the document with its predecessor, the "N.J. State Constitution of 1844", revealed changes made concerning the Judiciary Branch in 1948. After that date, members of the bar were under the sole constitutional authority of the Judicial Branch of government and called "Officers of the Court." (1)

Article III of both State Constitutions prohibit members of one branch of government from serving in another. Consequently, lawyers, officers of the Judiciary Branch, would not be eligible to serve as a Legislator or as a Governor in the State of New Jersey after 9/15/48! (2)

The Governor, the Senate President, the Speaker of the Assembly, my Legislators in the 23rd District, as well as numerous bureaucratic officials have been formally notified of this constitutional violation. All of these officials, who have sworn to support the constitution, have refused to respond to this issue. 46 certified letters have been sent to date. Silence, is the only official response concerning the constitutional provisions in Article III. (3)

I have presented formal civil rights notifications, and have reminded these officials of their "oath of office", and of the penalties for violating it. No warning seems to stir any response to this constitutional conflict of interests. (4)

I can only speak for myself, but I know if I was presented with similar warnings, I would find out what

was at the root of the issue. Non-lawyer legislators certainly would not risk a charge for perjury just because some fellow legislators were friends unless there were some really good tools of persuasion.

Where is the focus of such power that can control the Governor, the Legislators, and even the bureaucrats?

The Vortex of Power

The duties of creation, and correction of the law are the responsibility of the elected representatives of the people; they serve in the Executive and Legislative Branches of government. These mechanisms of government are the only defense the citizens have to challenge judicial activism.

To find the root of any problem, one must always follow the money trail. All funding of state government is authorized by the Legislature, so that is a good place to look. (5)

Any act concerning a revenue measure must originate in the Assembly, and at least one Assembly member must introduce it for consideration by committee. Even the Governor cannot get any tax plan considered unless some member of the Assembly will first sponsor it. (6)

Once the bill passes the committee, it gets posted, at the discretion of the Speaker, for a floor vote by the full Assembly. If for some reason the bill is not in the favor of the Speaker, it might not ever get posted for a vote by the full Assembly.

Assuming that the bill did have the favor of the Speaker, a Senate sponsor is needed to introduce the matter to the upper house, the State Senate. The process is similar to the Assembly version mentioned above, except that this time

the committee approved act is submitted to the Senate President. If the proposed legislation, which has made it through the entire legislative process is not in the favor of the Senate President he can allow it to just die by not posting it for a vote before the full Senate. (7)

"Career Choices"

An aspiring statesman would think that he could finally make his mark once the election returns confirm that first victory to a legislative seat. It is a dream that certainly ends quickly once the power of the Senate President and the Assembly Speaker is realized by any freshman legislator. Any promise made to constituents that does not coincide with the personal agenda of the Senate President and the Assembly Speaker is doomed to be broken.

No elected official can succeed with any action to create a new law, delete or correct an old law, or challenge an intolerable Supreme Court decision without the cooperation of these two Legislative leaders!

There is no Legislator who can resist. The choice is to please the Senate President and the Assembly Speaker or be labeled as ineffective and lose the next election because no sponsored legislation ever got voted on. Unfortunately, the Governor is in the same position.

One person, the Senate President, Senator Donald DiFrancesco, can virtually stop ANY governmental action in the State of New Jersey, by just not ever scheduling a bill to come up for a vote. The Senate Rules allow the Senate President to schedule bills in the order of his "pleasure", the Assembly Speaker has similar provisions in the Rules of the General Assembly. (8) The power to allow or not allow funding for a program, the power to change an environmental regulation or penalty, a gun law,

speed limit, or whatever. This allows the leader the power to trade the scheduling of a vote by the full House for support of whatever the leader wants. The power to change position or break a promise and there is no recourse, because the only action actually bartered is inaction. There is no law that holds one accountable for not doing something.

Sound The Alarm!!!

The beautifully designed protections of checks and balances that are guaranteed to all citizens by our Constitution can only function if all of the branches of government are free to operate independent of the influences of the others. The drafters of the N.J. State Constitution were aware of this and provided protections to ensure that in Article III.

Yet even non-lawyer Legislators fear to address this constitutional issue that they are sworn to support. The reason is that the Senate President is a lawyer, and the Assembly Speaker is a member of the bar, and would be ineligible to serve in their office without a Constitutional amendment ratified by the voters.

The "career choice" that the Governor, Legislators, and bureaucrats alike are making is that this issue will pass, and if anything is said, and the Legislative leaders prevail, their political career will be ruined. By remaining silent however, they are supporting what is essentially a dictatorship in the Great State of New Jersey.

Our forefathers must be churning in their graves! **A mechanism of inaction is virtually delegated to one person, whether it be the Speaker of the Assembly or the Senate President, both are members of the bar, officers of the Judiciary, and according to Article III of the N.J. Constitution, ineligible to hold an office in the Legislative or Executive Branches of state government.**

I will not surrender to this. While there is nothing that constitutionally prohibits the Legislature from creating its own procedures,(9) we the citizens must convince our Legislators and Governor to neutralize this position of power immediately. There is no place in a democratic government for any one person to have such power as to thwart the combined will and efforts of the citizens, their elected Legislators, and the Governor from duly defending their interests concerning government.

Serving At The Pleasure . . .

Like the provisions in the Judicial Article of the State Constitution, the Senate Rules and the General Assembly Rules state that others shall serve at the pleasure of these leaders.

Senate Rule 23 states: "He (the Senate President) shall appoint all committees, unless otherwise specially directed by the Senate. The chairman, vice chairman, and other members of each committee shall serve at his pleasure." (10)

The term pleasure is particularly disturbing, for those who are supposed to be serving this leader are the elected representatives that are supposed to be serving the people. Each Legislator has been elected by his constituents to represent the particular needs of each district, the pleasure of the Senate President may not coincide with these district specific needs and because of the existing power structure in the Legislature today these needs may not even get addressed!

I was so intrigued with the pleasure terminology I looked to find if it was always that way. It turns out that it was not! On page 68 of the 1909 edition of the "Fitzgerald's Manual of the Legislature of N.J." there is no mention of pleasure anywhere in the descriptions of the duties of the President of the Senate. Sometime between 1909 and 1997 there was a drastic change in the powers of the Senate President.

Today, he schedules issues at his pleasure as well, but again there was no such provision in 1909. I don't know just when this change took place, but I will find out.

The Correction

A good start would be to go back to the description of the duties as listed in the older Legislative Manuals. The President should moderate the meetings of the Senate, but he must not have virtual dictatorial powers that we see today.

The current policy of inaction as a weapon must be eliminated. All Legislators are elected by equal numbers of citizens, and therefore should be equal in their ability to pursue an issue.(11)

The filtering methods of the committees are still important, but the current policy of shelving bills by a chairman to sidetrack legislation that doesn't fit the agenda of the chair must end. All bills must be considered by the committee in a certain time frame, and if passed, they must go for a full vote within a certain time frame. No bill should be denied a full vote by the house if it passed out of committee.

One problem that could arise is that there would be too much legislation. Other states have limited the number of bills that can be introduced by each Legislator. A great idea! I suggest 10 per session per Legislator except in cases of repealing a law. That would amount to 1200 potential new laws per session, more than enough. Limit the amount, and the quality will improve.

To Senator DiFrancesco & Speaker Collins:

You, gentlemen, are violating the civil rights of all of the citizens of the State of New Jersey. You have been duly noticed via certified mail that your serving in the Legislature violates Article III of the N.J. State Constitution, which you have sworn to support.

Numerous parties are creating a coalition committed to addressing the conflict of interests that you represent in your offices as Senate President and Assembly Speaker, and are determined to see that this issue is formally addressed.

With all due respect, step down from your offices, and allow the process of constitutional corrections to commence without incident. ☼

Notes:

1. In Re Wilson, 81 NJ at 458; State v. Rush, 46 NJ at 411.

2. N.J. Constitution of 1947: Art. III; Art. VI Sect. 2 Par. 3; Art. VI Sect. 7. Comparison made with N.J. Constitution of 1844 Articles III & VI.

3. N.J. Constitution: Art. IV, Sect. 8; Art. V, Sect. 1, Par.11; Art. VII, Sect. 1, Par. 1.

4. United States Code: Title 18 Section 1621, "Oath of Office"; Title 42 Sections 1986 & 1983, "Violation of Civil Rights".

5. N.J. Constitution: Art. VIII, Sect. 2, Par. 2.

6. N.J. Constitution: Art. IV, Sect. 6, Par. 1.

7. "Fitzgerald's N.J. Legislative Manual" (1997 Edition): Pg. 320, Senate Rule #24.

8. "Fitzgerald's N.J. Legislative Manual" (1997 Edition): Pg. 355, General Assembly Rule 4:7

9. N.J. Constitution: Article IV, Sect. 4, Par. 3.

10. "Fitzgerald's N.J. Legislative Manual" (1997 Edition): Pg. 320, Senate Rule #23; also see, Pg. 355, General Assembly Rule 4:6; Pg. 362 & 363, General Assembly Rules: 10:3, 10:5, & 10:7.

11. N.J. Constitution: Art. IV, Sect. 3.

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